

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FTE NETWORKS, INC.	:	
	:	
Plaintiff	:	
	:	
v.	:	No. 1:22-cv-00785
	:	
ALEXANDER SZKARADEK AND	:	
ANTONI SZKARADEK	:	
	:	
Defendants	:	

**DEFENDANTS' SUR-REPLY IN OPPOSITION TO FIRST CAPITAL
REAL ESTATE TRUST, INC.'S MOTION TO INTERVENE**

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SUR-REPLY ARGUMENT

Defendants, Alexander Szkaradek and Antoni Szkaradek (“Szkaradeks”), by and through their undersigned counsel, hereby submit this Sur-Reply in response to the Reply¹ filed by Movant First Capital Real Estate Trust, Inc. (“FC REIT”) in the above-captioned matter.

In its Reply, FC REIT argues that notwithstanding its status as a forfeited corporation, a forfeited corporation may “sue or be sued in the name of the corporation”, relying on Md. Code Ann., Corps & Ass’n § 3-515(c)(3). However, this section applies if and only if the litigation is to “liquidate and wind up affairs”. *See* Md. Code 3-515(c). FC REIT’s Motion to Intervene contained no allegations as to its forfeited status, no allegations as to any authorization of a director-trustee to bring the action, and no indication that the Motion is part of any liquidation process.

Now, in its Reply, FC REIT attempts to remedy these clear deficiencies by representing to the Court that FC REIT is in fact pursuing a liquidation and wind up of its affairs. However, just two weeks ago, FC REIT readily acknowledged that it was not seeking to liquidate or wind up its affairs. In a letter dated July 28, 2022, FC REIT’s counsel admitted that FC REIT is taking steps to “revive the charter for [FC REIT], including the filing of Form 1 corporate forms for the corporation for 2020 through 2022 with the Maryland State Department of Assessments and Taxation.” *See* Exhibit “A” hereto.

Thus, according to well established Maryland case law, it is clear that FC REIT is not permitted to file this Motion to Intervene and that its Motion is null and void as a matter of law.

Dual Inc. v. Lockheed Martin Corp., 857 A.2d 1095, 1101-02 (Md. 2004); *Thomas v. Rowhouses*,

¹ FC REIT’s Reply Memorandum is in violation of Local Rule 7.1.3(c)(2), because its allegations regarding standing should and could have been, but were not, included in its initial papers. Local Rule 7.1.3(c)(2) provides that “[t]he party filing the opening brief shall not reserve material for the reply brief which should have been included in a full and fair opening brief.”

Inc., 47 A.3d 625, 629-30 (Md. App. 2012); *Mintec Corporation v. Miton*, 392 B.R. 180, 185-87 (U.S.D.C., D. Md. 2008).

Finally, on August 3, 2022, through a Petition filed by a stockholder of FC REIT in the Circuit Court for Baltimore County, Maryland, No. C-03-CV-22-003063 (the “Petition”), the stockholder has sought a supervised dissolution and liquidation of FC REIT. A true and correct copy of the Petition is attached hereto and marked as Exhibit “B”. In the Petition, Petitioner seeks the appointment of a receiver, injunction of the actions of its officers, directors, agents and advisors, and an investigation of financial transactions of FC REIT, on grounds that FC REIT’s charter has been forfeited yet FC REIT continues to take actions such as the filing of the instant Motion to Intervene. The appointment of a receiver would terminate the powers of the director-trustees of FC REIT. At the very least, the Motion to Intervene should be denied pending the outcome of FC REIT’s revival status and the stockholder Petition.

Accordingly, for all of these additional reasons, the Motion to Intervene should be denied.

Respectfully submitted,

LAMB McERLANE PC

Dated: August 15, 2022

By: /s/ Joel L. Frank
Joel L. Frank (*pro hac vice*)
John J. Cunningham, IV (*pro hac vice*)
Virginia Whitehill Guld, ID No. 2792
LAMB McERLANE PC
24 East Market Street, P.O. Box 5656
West Chester, Pennsylvania 19381
Telephone: (610) 430-8000
Email: jfrank@lambmcerlane.com
Email: jcunningham@lambmcerlane.com
Email: vguldi@lambmcerlane.com

Attorneys for Defendants
Alexander Szkaradek and Antoni Szkaradek

CERTIFICATE OF SERVICE

This is to certify that in this case a complete copy of the foregoing Defendants' Sur-Reply in Opposition to First Capital Real Estate Trust, Inc.'s Motion to Intervene has been filed electronically and is available for viewing and downloading from the ECF system. This document is being served upon the all counsel of record, via ECF notification.

LAMB McERLANE PC

Dated: August 15, 2022

By: /s/ Joel L. Frank
Joel L. Frank (*pro hac vice*)
John J. Cunningham, IV (*pro hac vice*)
Virginia Whitehill Guldi, ID No. 2792
LAMB McERLANE PC
24 East Market Street, P.O. Box 5656
West Chester, Pennsylvania 19381
Telephone: (610) 430-8000
Email: jfrank@lambmcerlane.com
Email: jcunningham@lambmcerlane.com
Email: vguldi@lambmcerlane.com
Attorneys for Defendants,
Alexander Szkaradek and Antoni Szkaradek